B2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 02 032 54326 Office: VERMONT SERVICE CENTER Date: MAR 28 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in pertinent regulations at 8 C.F.R. § 204.5(h)(3):

> Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:
>
> > (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(iii) Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner recycles demolition and construction debris. It seeks to employ the beneficiary as a transfer station operator. The initial petition included no supporting evidence. The only document submitted with the petition form is a letter from [redacted] vice president of the petitioning company, stating that the petitioner has employed the beneficiary since December 1998 and that the beneficiary "is an employee of good standing, and comes with excellant [sic] recommendation."

The director requested further evidence. In the request notice, the director specified the ten regulatory criteria listed above, and stated that the petitioner must show that "the beneficiary is one of that small percentage who has risen to the very top of the field of endeavor" and earned "sustained national or international acclaim." In response, the petitioner has submitted a second

letter from [redacted] general manager of the petitioning company. This letter indicates that the beneficiary "has been employed by [the petitioner] since July 1999," contradicting the earlier letter which specified that the beneficiary had worked there since December 1998. [redacted] states that the beneficiary earns $900 per week and is therefore "the highest paid employee in his department." The petitioner cannot satisfy 8 C.F.R. § 204.5(h)(3)(ix) without evidence that the beneficiary is among the highest paid in his field throughout the nation, rather than merely his department at the petitioning company. Furthermore, the original petition form indicates that the beneficiary earns $560 per week. A subsequent salary increase cannot retroactively show that the beneficiary was already eligible as of the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

[redacted] adds that the beneficiary "is a great asset to our organization" and "an exemplary employee." We do not dispute these claims, but the petitioner has chosen to seek the most restrictive employment-based immigrant classification for the beneficiary. As the director has already explained, the petitioner's burden is not merely to show satisfaction with the quality of the beneficiary's work. Rather, the petitioner must show that the beneficiary has earned sustained national or international acclaim as one of the very top workers in his field. The two letters that comprise the entirety of the evidence do not show that the beneficiary has earned any acclaim or recognition outside of the petitioning company.

The director denied the petition because the petitioner had not submitted any evidence to show the required level of acclaim. On appeal, the petitioner submits a statement from the beneficiary, who asserts that his employer "is willing to do anything in order for me to get my legal papers." Again, the critical issue here is not the company's willingness or desire to employ the beneficiary. Lesser immigrant classifications exist which focus more on the skills required for a given job. Employer satisfaction is simply not sufficient to establish that the beneficiary is nationally or internationally acclaimed as an alien of extraordinary ability in his field.

The petitioner indicates on appeal that a brief is forthcoming "within 30 days," but to date, some six months after the filing of the appeal, the record contains no further submission. The petitioner does not describe the additional evidence that is said to be forthcoming, nor is it readily apparent that any evidence could exist that would be capable of establishing that the transfer station operator of a small recycling company has earned national acclaim.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the beneficiary has distinguished himself as a transfer station operator to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his

field at a national or international level. From the evidence presented, it is not clear that sustained national or international acclaim is possible in the beneficiary's field, or that such field falls within the sciences, arts, education, business or athletics as required by the statute and regulations. The petitioner has submitted no evidence to satisfy any of the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.